

The PNC Financial Services Group, Inc.
249 Fifth Avenue
One PNC Plaza, 21st Floor
Pittsburgh, PA 15222-2707

412 768-4251 Tel
412 705-2679 Fax
james.keller@pnc.com

James S. Keller
Chief Regulatory Counsel

January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, NW
Washington, DC 20051
regs.comments@federalreserve.gov

Attention: Docket No. R-1167, R-1168, R-1169, R-1170 and 1171

Re: Proposed Disclosure Rules under Consumer Protection Regulations

Dear Ms. Johnson:

PNC Bank, National Association ("PNC Bank"), Pittsburgh, Pennsylvania, is pleased to submit comments on the proposal of the Board of Governors of the Federal Reserve System ("Board") to amend five consumer protection regulations concerning a new definition of "clear and conspicuous" as the standard for various disclosures in the regulations. The regulations affected are Regulation B (Equal Credit Opportunity Act)(12 C.F.R. § 202), Regulation E (Electronic Funds Transfer) (12 C.F.R. § 205), Regulation M (Consumer Leasing) (12 C.F.R. § 213), Regulation Z (Truth in Lending) (12 C.F.R. § 2226), and Regulation DD (Truth in Savings) (12 C.F.R. § 230). The proposed amendments, which are essentially identical for all the affected regulations, are set forth at 68 Fed. Reg. 68,786 et seq. (December 10, 2003)).

As of September 30, 2003, The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, was the twentieth largest banking holding company, with approximately \$72.3 billion in assets. Its lead bank, PNC Bank, National Association ("PNC Bank"), Pittsburgh, Pennsylvania, was the fifteenth largest bank in the United States, with approximately \$65.2 billion in assets. PNC Bank maintains branches in Pennsylvania, New Jersey, Ohio, Kentucky and Indiana. PNC Bank also has two bank affiliates: PNC Bank, Delaware, which has branches in Delaware, and UnitedTrust Bank, which has branches in New Jersey and Pennsylvania.

Background

The stated purpose of the Board's proposal is to establish a more uniform standard for providing consumer disclosures in order that consumers receive noticeable and understandable information. The Board also stated that having a consistent standard in the various consumer disclosure regulations would facilitate compliance by institutions. The five affected regulations currently have similar, but not identical, language for the disclosure standard requirements. The proposal would replace the

similar disclosure standards in each of the affected regulations with an identical definition of “clear and conspicuous.” Amendments would be made to each of the regulations’ related commentaries to provide identical examples of how to meet the “clear and conspicuous” definition.

The uniform disclosure standard that the Board proposes to adopt for Regulations B, E, M, Z and DD is the “clear and conspicuous” disclosure standard used in the Board’s Regulation P (Privacy of Consumer Financial Information, 12 C.F.R. § 216). Regulation P defines “clear and conspicuous” as a disclosure that is “reasonably understandable and designed to call attention to the nature and significance of the information.” This definition would be added as a new definition in each of Regulation B, Regulation E, Regulation M, Regulation Z and Regulation DD. The definition will have two components for a disclosure to be considered “clear and conspicuous.” First, the disclosure must be “reasonably understandable,” and second, it must be “designed to call attention to the nature and significance of the information.”

The proposals would also list illustrations of what it means to be “clear and conspicuous.” Examples of what is “reasonably understandable” would include “clear and concise sentences, paragraphs and sections”; “short explanatory sentences or bullet points”; “everyday words” and “avoidance of legal and highly technical business terminology.” Examples of ways to “call attention to the nature and significance of the information” include use of headings, easy to read type size (with 12-point type generally meeting the standard), wide margins and spacing, and boldface or italics for key terms.

PNC Position

While PNC supports clear and understandable consumer disclosures, and strives to ensure that PNC’s various account agreements, loan agreements and disclosures contain accurate, clear and understandable consumer disclosures, PNC does not support the proposed amendments to Regulations B, E, M, Z, or DD. Also, while PNC supports the goal of consistency in regulatory compliance, it believes that the Board’s proposals would not enhance consumer disclosures but would increase the compliance burden with respect to disclosures. Instead of furthering the goals of consistent consumer disclosures, the proposals would create longer, more confusing consumer disclosures, as well as increase litigation risk and impose enormous compliance costs upon the industry without a clear benefit to consumers. PNC strongly recommends that the Board withdraw the proposals for the following reasons:

1. Proposals will Require New Substantive Disclosures Requirements

As stated above, the new definition of “clear and conspicuous” will have two requirements: the disclosure must be (1) reasonably understandable and (2) designed to call attention to the nature and significance of the information. The latter part of this

definition will introduce a new substantive requirement that every required disclosure in each of the affected regulations would have to meet.

Current regulations generally do require a disclosure to be “conspicuous.” This has been interpreted to mean that the information is easily seen and readable, and not buried in small type among all other information. The revised definition would take the conspicuous requirement well beyond the current understanding, and require the form and format of information to be “designed to call attention to the nature and significance of the information.” Necessarily, to meet the revised definition, the information in the disclosures will need to stand out. While this can be done by using spacing, margins, different type styles and sizes as the examples suggest, such formatting devices would only cause more confusion to account or loan agreements and other disclosures.

It is also unclear whether the standard of “calling attention to the nature and significance of the information” would require an institution attempting to comply with the regulation to rank and gauge the presumed importance (nature and significance) of some required disclosures over other disclosures. For example, three of the required disclosures in Section 226.18 of Regulation Z are (1) the identity of the creditor, (2) the amount financed and (3) the late charge. Would a creditor determine that all three disclosures are equally significant and use headings, 12-point type and distinctive style to set off each required disclosure, or would a creditor determine that the amount financed is more important than the identity of the creditor and disclose accordingly. The former example would result in disclosures with all information highlighted and set off, which may distract consumers through information overload, while the latter example would have the creditor independently determining which disclosure may be more important than others. There would also be no guarantee that the creditor’s determination of the significance of the information would be accurate.

Using the examples in the proposal for “calling attention to the nature and significance of the materials” will require use of headings, 12-point type, distinctive type style, and other formatting devices to set the materials apart. Applying these examples to every disclosure requirement in every regulation would distort some information, disrupt the flow of material and distract the consumer from important material and contractual terms.

While a new substantive requirement does not appear to be the stated goal of the proposals, it appears to be an unavoidable consequence of the proposal.

2. The Proposal will Require Substantial Review and Revision to Existing Documents as well as Systems at a Substantial Cost with No Demonstrated Benefit to Consumers

The five affected regulations cover a wide number and variety of documents, loan agreements, account agreements and fee schedules used everyday at PNC in a variety of

media. They include a wide variety of documents, ranging from credit applications to adverse action notices, from deposit agreements to loan agreements, from monthly statements to ATM receipts. Every document or form, whether created specifically for a particular transaction, existing as a preprinted paper form or brochure, or available electronically, will need to be reviewed and revised based on the proposed regulation.

The required printing cost for new forms, agreements and disclosures will be very significant, but this expense will only be one component of the overall cost to the institution. The time and expertise of business, legal and compliance personnel will be devoted to determining how to comply with the new regulations and implementing the changes. Systems will need to be reprogrammed. Institutions will be required to destroy large quantities of existing forms and materials.

The dedication of employee, system and monetary resources to the extensive revisions to the numerous disclosures will mean that other initiatives, such as new product development and implementation, will be necessarily delayed.

3. There is No Demonstrated Problem with Existing Disclosure Standards

Existing disclosure standards have been employed successfully without evidence of confusion on the part of consumers. Courts have been able to interpret the current standards of “clear and conspicuous” without problems. The Board does not identify any problems with existing standards, but merely claims that adopting Regulation P’s “clear and conspicuous” standard would create consistency that is beneficial to the industry. If there are examples of existing problems or explanations of unclear or confusing disclosures, they should be identified and addressed specifically. Imposing a uniform standard without consideration to the various types of disclosures affected could create more problems than benefits.

4. The Board’s Proposal will Generate Increased Litigation Risk

There is a private right of action in the affected Regulations, unlike in Regulation P. Any change in disclosure requirements will invite litigation over the interpretation of the regulations. Litigation will subject institutions to statutory damages even without harm to the consumer. The examples in the proposals of how to meet the two-part definition of “readily understandable” and “designed to call attention” do not make it clear whether an institution should employ every single criteria in order to shield itself from potential liability. Plaintiffs could routinely second guess exactly what makes a particular disclosure compliant with the new standards. It is unclear how courts would apply the standards. This could result in frivolous litigation and large potential liability to institutions with no clear safe harbors. Even if an institution were successful in defending its disclosures, the cost of defense or settlement would be excessive.

5. The Board's Proposals give no Guidance or Consideration for Concerns in Marketing or Advertising

Regulations Z, M and DD not only regulate transactional disclosures, but they also regulate the advertising of credit or deposit products. Generally, certain advertising terms must also be "clear and conspicuous."

If the regulations incorporate the new definitions of clear and conspicuous, then marketing of consumer products will be adversely impacted. For example, in advertising a money market product with an annual periodic yield (APY) triggering additional disclosures, these disclosures will need to be distinctly set apart and possibly in 12-point type, thus distorting the advertising. This may lead to marketing with more generic focus to avoid triggering the regulatory requirements. More generic advertising would not benefit consumers researching the choice of a financial institution or a researching the terms of a particular product.

6. The "Clear and Conspicuous" Standard Set Forth in Regulation P is Not An Appropriate Standard for Regulations B, E, M, Z or DD

The privacy disclosures in Regulation P generally stand on their own, while the disclosures in the other regulations are usually part of other account information, contractual terms or other integrated document. Privacy disclosures address comprehensive information sharing and security concerns of an institution, and may be better suited to the form and formatting devices set forth in the proposals.

A uniform standard overlooks the reality that different financial products and different types of forms or disclosures, such as periodic statements and ATM receipts versus contract disclosures, are better suited to different types of disclosures. Disclosures that can be integrated with contracts, such as Regulation M, would result in overwhelming, long contracts with some terms highlighted or set off, and possibly over emphasized to the detriment of equally important contractual terms. In addition, some affected regulations now provide model forms, which are widely used. Changes to the model forms will be necessary.

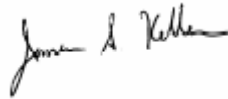
Summary

PNC opposes the adoption of the proposed rules, and recommends that they be withdrawn. We believe that the adoption of the Regulation P standard is inappropriate to the variety of consumer disclosures affected by Regulations B, E, M, Z, and DD. While consistency is a laudable goal, we believe that consistency in this context will create more problems than benefits. In fact, forms and disclosures will be longer, more cumbersome, and may result in information overload, with the unintended consequence of fewer consumers actually paying attention to the information. The new substantive

element of "calling attention to the nature and significance" of the information will require a careful scrutiny and revision of countless forms, agreements, disclosures, and statements and impose enormous costs. Finally, there would be no safe harbor from the litigation risk accompanying the new disclosures.

PNC Bank appreciates the opportunity to comment on the proposed disclosure regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "James S. Keller". The signature is fluid and cursive, with the first name "James" and last name "Keller" clearly distinguishable.

James S. Keller

cc: Joseph J. Abdelnour

Drew J. Pfirman
John J. Wixted, Jr.